



ENTERED
02/27/2015

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
SIMBAKI, LTD; dba BERRYHILL BAJA	§	CASE NO: 13-36878
GRILL; dba BERRYHILL BAJA GRILL &	§	
CANTINA	§	
Debtor(s)	§	
	§	CHAPTER 7

**MEMORANDUM OPINION IN SUPPORT OF ORDER
DENYING CERTIFICATION TO COURT OF APPEALS**

Passage Realty, Inc. asks this Court to certify a direct appeal to the Fifth Circuit Court of Appeals under 28 U.S.C. § 158(d)(2)(A)(i).

Passage Realty seeks a ruling on whether this Court erred when it found that a lease, under which Passage was the landlord, was deemed rejected. The Debtor had filed a timely motion to assume the lease. 11 U.S.C. § 365(d)(1). The issue is whether § 365(d)(1) also required entry of an order by the deadline. The Court ruled that a “deemed” rejection had not occurred. Passage disagrees with the ruling.

The appeal is now moot.

Subsequent to the Court finding that a deemed rejection had not occurred, the lease was terminated. *See* ECF No. 333. Inasmuch as the lease has now been terminated, there is no longer any controversy for any Court to consider. If the appellate Court determines that this Court was correct, the lease is terminated. If the appellate court determines that the Court erred, the lease is terminated.

Because the matter is moot, the Court declines to certify a direct appeal.

SIGNED **February 27, 2015.**


Marvin Isgur
UNITED STATES BANKRUPTCY JUDGE